Finally, the Commission considers whether there are any remaining "unusual circumstances that would make entry contrary to the public interest under the particular circumstances of these applications." *Id.* at 6375 ¶ 267; *see also id.* at 6381-82 ¶¶ 281-82.

A. Grant of Qwest's Application is Consistent with Promoting Competition in Both the Local and Long Distance Markets

1. Competition Has Come to Montana, Utah, Washington and Wyoming

In evaluating previously-filed Section 271 applications, the Commission has emphasized that "compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest." *New York 271 Order*, 15 FCC Rcd at 4161 ¶ 422; *see also Texas 271 Order*, 15 FCC Rcd at 18557-58 ¶ 416. Indeed, checklist compliance by definition signals that "barriers to competitive entry in the local market have been removed and [that] the local exchange market is open to competition." *New York Order,* 15 FCC Rcd at 4162-63 ¶ 426. Here, as the State Commissions have found and as demonstrated above, Qwest has satisfied the checklist in each of Montana, Utah, Washington and Wyoming.

Local markets in the application states are open. Residents of these states are benefiting from extensive competition from all types of competitors using all three entry modalities provided under the Act. Moreover, as post-entry developments in other states make clear, Qwest's entry into the long distance market will prompt still further *local* competition by stimulating the local-market activities of the established IXCs.

As the Commission has held on numerous occasions, there is no CLEC market share test in the public interest inquiry or anywhere else in Section 271. *New Jersey 271 Order*, 16 FCC Rcd ¶ 168; *Pennsylvania 271 Order*, 16 FCC Rcd at 17487 ¶ 126; *Massachusetts 271 Order*, 16 FCC Rcd at 9118-19 ¶ 235; *Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6375-76 ¶ 268; *Texas 271 Order*, 15 FCC Rcd at 18558-59 ¶ 419; *New York 271 Order*, 15 FCC Rcd at

4163 ¶ 427. Nevertheless, CLECs have captured a significant share of the market in each of the application states. *See* Teitzel Decl. at notes 66-69 and accompanying charts. Qwest estimates CLEC market share in each state, as of April 30, 2002, as follows: Montana – between 5.9 and 10.1 percent; Utah – between 20.7 and 24.8 percent; Washington – between 20.8 and 20.9 percent; and Wyoming – between 11.6 and 15.1 percent. *Id.*

Because these estimates were calculated, in part, using the same methodology used by SBC, they can be compared to the market shares that existed in Texas, Kansas and Oklahoma when the FCC granted SBC's Section 271 applications for those states. In each of the application states, there has been comparable or greater entry than existed in Oklahoma (estimated at 5.5 to 9.0 percent) and Kansas (estimated at 9.0 to 12.6 percent) when SBC's application for those states was filed. *See Kansas/Oklahoma 271 Order*, 16 FCC Rcd at 6240 ¶¶ 4-5. Indeed, CLEC market shares in all but one of the application states actually exceed the market shares that existed in Texas (8.0 percent), *see Texas 271 Order*, 15 FCC Rcd at 18358 ¶ 5 & n.7. -- even though each of the application states is far less populous than Texas. In fact, Wyoming is the least populous state in the United States and Montana is the sixth least populous. *See* Teitzel Decl. at notes 72-73 and accompanying text.

2. The Experience of Post-Grant States Demonstrates that Competition in Montana, Utah, Washington and Wyoming Will Only Intensify Following Grant of Qwest's Application

The benefits of in-region, interLATA entry by BOCs already have been established by the experience of BOCs in other states and independent studies continue to confirm that the benefits to consumers of BOC entry into the long distance market are substantial. A May 2001 study by the Telecommunications Research Action Center ("TRAC") demonstrates that New York consumers will save up to $284 million annually on long distance telephone service as a result of BOC entry into the interLATA market in that state. 94/ There is every reason to believe that consumers in the application states will experience similar benefits and savings if Qwest is allowed to offer interLATA long distance services.

Permitting Qwest to enter the long distance market would increase customer choice and competition in the *local* market as well. Experience has shown that a BOC's imminent entry into the long distance market acts as a catalyst for CLECs to accelerate entry into local exchange markets. In particular, IXCs faced with the prospect of increased competition for their core long distance customers accelerate their local entry plans in an effort to retain those customers through bundled service packages. The data from New York bear this out. CLECs put their local entry plans into gear only once it became clear that Verizon's Section 271 application would succeed. In the News Release announcing the Commission report entitled *Local Telephone Competition: Status as of January 31, 2000*, released May 21, 2001, the Commission concluded:

> CLECs captured 20% of the market in the State of New York — the most of any state. CLECs reported 2.8 million lines in New York, compared to 1.2 million lines the prior year — an increase of over 130% from the time the FCC granted Verizon's long distance application in New York in January 1999 to January 2000.

News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition*, Federal Communications Commission (released May 21, 2001). Meanwhile, in its most recent report on Local Telephone Competition, released February 27, 2002, the Commission reported that the CLEC access line total in New York had grown to 3.2 million lines, representing an increase in the CLEC market share to 23 percent. *See* Federal

94/ *See TRAC Estimates New York Consumers Save Up to $700 Million a Year on Local and Long Distance Calling*, Telecommunications Research Action Center, May 8, 2001. http://trac.policy.net/proactive/newsroom/release.vtml?id=18740.

Communications Commission, *Local Telephone Competition: Status as of June 30, 2001* (released Feb. 27, 2002).

Furthermore, data released by the New York State Public Service Commission reveal that the number of local exchange lines served by CLECs more than doubled from 1999 to 2000 (from 9.8 to 20.9 percent) following the grant of Verizon's Section 271 application; and, for the first time since the New York PSC began collecting these statistics, more CLEC access lines were dedicated to residential customers (52 percent) than to business customers (48 percent). 95/ In total, New York consumers will save an estimated $700 million annually on long distance and local telephone service. 96/

Similarly impressive statistics have been reported for Texas, where "CLECs have captured 12% of the market in Texas, gaining 644,980 end-user lines in the 6 months after the FCC granted SBC's Section 271 application — an increase of over 60% in customer lines since June 2000." *See* News Release, *Federal Communications Commission Releases Latest Data on Local Telephone Competition*, Federal Communications Commission (released May 21, 2001). The Commission's February 27, 2002 report shows a further increase in CLEC market share in Texas to 14 percent. *See* Federal Communications Commission, *Local Telephone Competition: Status as of June 30, 2001* (released Feb. 27, 2002). Permitting Qwest to enter the interLATA market should have a similar effect in Montana, Utah, Washington and Wyoming, enabling customers to obtain expanded benefits of local competition.

95/ *See* New York State Public Service Commission, *Analysis of Local Exchange Service Competition in New York State Reflecting Company Reported Data and Statistics as of December 31, 2000* at 3, 4. http://www.dps.state.ny.us/telecom/telanalysis.htm.

96/ *See TRAC Estimates New York Consumers Save Up to $700 Million a Year on Local and Long Distance Calling*, Telecommunications Research Action Center, May 8, 2001; http://trac.policy.net/proactive/newsroom/release.vtml?id=18740.

Conversely, if Qwest is not afforded an opportunity to become a full service in-region competitor, there is a risk that customers will have a narrower range of service options, particularly in less competitive geographically rural areas. Local exchange carriers that want to be healthy, viable companies need to offer what customers want: attractive packaging of local service, intraLATA long distance and interLATA long distance, calling features, data services, Internet connectivity, and other choices. *See* Teitzel Decl. Exh. DLT-Track A/PI-GEN-2, "*Qwest, Consumers and Long Distance Entry: A Discussion Paper.*" Qwest's competitors can do that today and have chosen to do so only in certain markets.

The evolving markets in the application states, and the dynamic telecommunications marketplace in post-grant states, dramatize the benefits to the public that will result from permitting Qwest to provide in-region, interLATA telecommunications services in Montana, Utah, Washington and Wyoming.

B. Qwest Has Provided Adequate Assurances That the Local Exchange Market Will Remain Open to Competition After Section 271 Approval

Although the Commission has "never required" adoption of a performance assurance plan, the Commission has stated that implementation of such a plan constitutes "probative evidence" that an applicant will continue to meet its Section 271 obligations, and that its long distance entry is consistent with the public interest. 97/ But the Commission also has recognized that, in view of the "other regulatory and legal processes that provide additional incentives for continued compliance with section 271 . . . [it] is not necessary that the state

---

97/ *New York 271 Order*, 15 FCC Rcd at 4164-65 ¶ 429 ("Although the Commission strongly encourages state performance monitoring and post-entry enforcement, we have never required BOC applicants to demonstrate that they are subject to such mechanisms as a condition of section 271 approval."); *Texas 271 Order*, 15 FCC Rcd at 18559-60 ¶ 420.

mechanisms [in a post-entry performance assurance plan] alone provide full protection against potential anti-competitive behavior by the incumbent." *New York 271 Order* at ¶ 430.

In prior Section 271 cases, the Commission has sought to determine whether a proposed performance assurance plan "fall[s] within a zone of reasonableness" and is "likely to provide incentives that are sufficient to foster post-entry checklist compliance." *Id.* at ¶ 433. To guide this analysis, the Commission has identified five key characteristics of an acceptable plan: (a) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (b) clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (c) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (d) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (e) reasonable assurances that the reported data are accurate. *See id.* The performance assurance plans entered into by Qwest in the application states satisfy each of these criteria.

Qwest proposes to implement a comprehensive set of performance measures and enforcement mechanisms collectively referred to in Montana, Utah, Washington and Wyoming as the "QPAP." *See generally* Reynolds QPAP Decl. The QPAP is built around the same key measures as other plans previously approved by this Commission. It has been enhanced through a collaborative process by the State Commissions and CLECs operating in the application states. *See* Section I, above. In this respect, the QPAP embodies the cumulative experience of prior Section 271 applications and the requirements of in-region CLECs. Accordingly, as shown below, the plan satisfies the Commission's requirements that post-entry performance assurance plans include the following:

- potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;

- clearly articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;

- a reasonable structure that is designed to detect and sanction poor performance when it occurs;

- a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and

- reasonable assurances that the data reported are accurate.

New York 271 Order at ¶ 433.

1. Qwest is Subject to Comprehensive Performance Reporting and Assurance Mechanisms

The QPAP emcompasses all the major wholesale services and functions relied upon for each different CLEC market entry strategy. The performance measurements in the QPAP cover (1) Electronic Gateway Availability; (2) Preordering; (3) Ordering; (4) Provisioning; (5) Maintenance and Repair; (6) Billing; (7) Network Performance; and (8) Collocation; and (9) Change Management. Performance measurements in each of these functional areas may include multiple sub-measurements covering different sub-processes, different wholesale services, and several geographic disaggregations (*e.g.*, dispatches within an MSA vs. dispatches outside an MSA; urban zone '1' vs. rural zone '2'). Reynolds Decl. at 21-22.

Altogether, Qwest will monitor wholesale service according to over 600 performance submeasurements and detailed business rules established by the ROC. *Id.* at 14. The QPAPs ensure that the performance results will be accurate and reliable by providing for audits by an independent auditor, either by the individual state or as part of a regional audit conducted by a collaborative of states. *Id.* The QPAPs also provide for a review opportunity for CLECs, Qwest and the State Commissions every six months. *Id.* at 22.

2. Qwest is Subject to Significant Financial Incentives for Post-Entry Compliance

Although modeled on that of the SBC-Texas performance assurance plan approved by the Commission, the payment structure of the Qwest plan contains significant enhancements. The result is a structure that meets and in many cases exceeds the payment structure the Commission has approved in prior Section 271 proceedings. Moreover, the four QPAPs expose Qwest to payments of *at least 36%* of its net local revenue in each state each year. There is, therefore, no question that each state's payment structure and criteria are reasonably designed to detect and sanction poor performance, if and when it should occur.

Like the SBC-Texas plan and several other PAPs that previously have been endorsed by the Commission, the Qwest plan provides for two categories of self-executing payments that are triggered if the QPAP's standards are not met. Tier 1 applies at the individual CLEC level and provides for compensatory payments to CLECs in the nature of liquidated damages based upon monthly performance reports. As noted, these payments are self-executing, that is, they are made to each CLEC each month whenever the pertinent standard is not met (for parity measurements by any amount that is statistically significant), *regardless of whether the CLEC has suffered any damages resulting from the missed measurement.* Tier 2 payments are calculated at the aggregate CLEC level; they provide additional financial incentive payments and are made to a designated state fund or the state general fund.

The Commission has required that plans place sufficient BOC local revenues at risk to ensure that the applicant's commitment to meeting the performance criteria contained in the plan is acceptable. Prior plans have varied in their design in this respect. The Commission has held, however, that, where a plan annually places at risk at least 36% of the applicant's net return as calculated from ARMIS data, 98/ it provides a meaningful and significant incentive to refrain from anticompetitive behavior. 99/ In each of the application states, Qwest's PAP places at least 36% of Qwest's net return at risk every year, as follows:

- In Washington, the cap is set at 36% of ARMIS net return. *See* Washington QPAP § 12.1.
- In Utah, the 36% cap may be increased to a maximum cap of 48% upon specific PSCU findings. The Utah QPAP also provides that if CLECs' Tier 1 payments are limited by the cap, they may be recompensed from current and future Tier 2 payments. *See* Utah QPAP §§ 12.1, 12.2.2.1.
- The Montana and Wyoming QPAPs both have a cap of 36% subject to increase based upon state commission action after the cap is reached. *See* Montana and Wyoming QPAPs, respectively, at §§ 12.1, 12.2. 100/

The WPSC has not accepted the payment cap provision submitted by Qwest; indeed, the WPSC has disputed the "advisability" of either a specific percentage-of-revenue cap or "dollar limit on compensation derived from such a cap." *First Report on Group 5A Issues* at

98/ ARMIS data "represents total operating revenue [from local service] less operating expenses and operating taxes" and is provided to the FCC on an annual basis. The Commission has found that a calculation of "net return" based upon this data was a "reasonable approximation of total profits derived from local exchange service." *New York 271 Order* at 4168 (¶ 436); *Texas 271 Order* at 18561-62 (¶ 424).

99/ *See New York 271 Order* at 4167-68 (¶ 435 & n.1332); *Texas 271 Order* at 18561-62 (¶ 424 & n.1235); *Kansas/Oklahoma 271 Order* at 6378-79 (¶ 274 & n.837). In New York, this amount was subsequently increased, but only following concerns arising after Section 271 approval. *See Order Adopting the Amended Performance Assurance Plan and Amended Change Control Plan*, Case Nos. 97-C-0271, 99-C-0949 NY PSC (Nov. 3, 1999), available at http://www.dps.state.ny.us/fileroom/doc6721.pdf.

100/ For Montana, 36% Net Return based upon 1999 ARMIS data is $16,000,000. For Utah, 36% Net Return based upon 1999 ARMIS data is $46,000,000; 48% is $61,000,000. For Washington, 36% Net Return based upon 1999 ARMIS data is $81,000,000. For Wyoming, 36% Net Return based upon 1999 ARMIS data is $12,000,000.

7; *see also* Reynolds Decl. at 17-18. In its wrap-up order in its Section 271 review proceeding, the WPSC asserted that "the dynamics of Wyoming's telecommunications industry and its unique competitive conditions (including among the highest cost of serving and its small, relatively widely spaced markets) clearly show that the QPAP should not be capped at the outset." *Wyoming Final Order* at ¶ 42. More recently, however, the WPSC has stated that it would "leave to the FCC the decision of the form the Wyoming QPAP should take." *Order On SGAT Compliance* at ¶ 10.

In any case, there is no self-evident relationship (and the WPSC did not establish one) between a sparsely populated state and the need for a plan without an annual cap; moreover, although Wyoming is one of Qwest's smaller states, its sparse population is not relatively different from Idaho or North Dakota, both of which have endorsed maximum caps on Qwest's liability. Meanwhile, the FCC has stated clearly and consistently (without exception for small states) that a 36% annual cap provides meaningful and sufficient incentive to meet performance standards and that, in any event, a performance assurance plan is not the only mechanism available to ensure non-discriminatory performance. The Wyoming QPAP includes both a 36% cap and a mechanism that allows the cap to be raised if Qwest's payments continually exceed the cap. These provisions provide meaningful and significant incentives to comply with performance standards. They are consistent not only with numerous performance assurance plans approved by this Commission and with those accepted by to date by the other eight states in Qwest's region that have considered them. Qwest believes, therefore, that they should be acceptable to the WPSC and this Commission. 101/

101/ The WPSC also declined to accept certain other provisions embodied in the Wyoming QPAP. These provisions relate to the six-month review mechanism; issues related to payment de-escalation, or "sticky duration;" and election of remedies. *See* Reynolds Decl. at 22-25, We note also that the QPAP will not be the only safeguard against backsliding. The most significant assurance of future compliance beyond the QPAP is the Commission's enforcement authority under Section 271(d)(6). *See* 47 U.S.C. § 271(d)(6). *See also New York 271 Order*, 15 FCC Rcd at 4164-65 ¶ 429. Thus, there is more than adequate assurance that Qwest's market will remain open.

C. There Are No "Unusual Circumstances" That Would Make Long Distance Entry Contrary to the Public Interest.

The Commission has explained that it "may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest." *Texas 271 Order*, 15 FCC Rcd at 18558 ¶ 417. Significantly, however, the Commission recently has "disagree[d] with commenters who assert that we must, under our public interest standard, consider a variety of other factors as evidence that the local market is not yet truly open to competition, despite checklist compliance." *New Jersey 27 Order* at ¶ 168 & n.516. The record demonstrates that no "unusual" circumstances exist in any of the application states.

First, the local market in each of the application states is open and local competition is thriving. And, as reflected in the experience of the post-relief BOCs in other states, Qwest's entry into the long distance market in these states will further promote local competition.

28-30, 37-39. Qwest believes these provisions are not encompassed within this Commission's zone of reasonableness standard. Significantly, the WPSC has stated that, irrespective of its unwillingness to accept certain provisions as proposed by Qwest, it would "leave to the FCC the decision of the form the Wyoming QPAP should take." *Order On SGAT Compliance* (WPSC July 9, 2002) at ¶ 10.

Second, mechanisms are in place to ensure that the local market will remain open. As discussed above, the state commissions have adopted strict performance standards, and have approved comprehensive performance assurance plans that mirror the plans adopted by other RBOCs and previously approved by this Commission.

Meanwhile, and as discussed above, the state commissions have set TELRIC rates for unbundled network elements. There is no basis under the "public interest" test of Section 271(d)(3)(C) for imposing an independent requirement that the BOC provide still lower rates in order to afford CLECs even greater incentives to enter the market by means of the UNE platform.

Qwest anticipates, however, that AT&T and others will raise in this proceeding the same "price squeeze" argument that they have unsuccessfully raised in most of the recent Section 271 proceedings, relying once more on the D.C. Circuit's opinion in *Sprint Communications Co., L.P. v. FCC*, 274 F.3d 549 (D.C. Cir.2002). But that argument will have no greater merit here than in the *Vermont, Georgia/Louisiana,* or *New Jersey* proceedings, in which the Commission rejected it on expansive grounds. 102/

102/ *Vermont 271 Order*, ¶¶ 65-73; *Georgia/Louisiana 271 Order*, ¶¶ 283-90; *New Jersey Order*, ¶¶ 169-175. The term "price squeeze" is a misnomer in this context, because a true price squeeze, in the antitrust sense, can arise only where a firm charges more than a "fair price" for an essential input. *See Town of Concord v. Boston Edison Co.*, 915 F.2d 17, 25 (1st Cir. 1990) (Breyer, J.) (quoting *United States v. Aluminum Co. of America*, 148 F.2d 416, 437-38 (2d Cir. 1945)). As an initial matter, ILECs can hardly be said to sell their UNEs at "unfair" prices, because those prices are regulated, *see id.* at 25-29, and indeed are based on TELRIC, an explicitly pro-competition forward-looking cost methodology. Just as important, the UNE-Platform *per se* is not remotely an essential input for CLEC market entry, because CLECs may alternatively enter either through resale or through the deployment of their own alternative facilities, whether or not combined with individual ILEC UNEs. For that reason among others, the Commission has properly rejected AT&T's misplaced reliance on *FPC v. Conway*, 426 U.S. 271 (1976). *See Vermont 271 Order*, ¶ 67.

As an initial matter, the D.C. Circuit did not endorse AT&T's price squeeze claim on the merits, as the Commission itself has recognized. 103/ To the contrary, the court left in place the order granting Section 271 authorization for Kansas and Oklahoma, expressed concern merely about what it perceived as the Commission's "brush-off" of AT&T's claim, and remanded to the Commission for a fuller explanation. *Sprint*, 274 F.3d at 554. It would make little sense for the Commission to deny this Section 271 application, even though Qwest has satisfied all of its obligations under the checklist to charge CLECs TELRIC-compliant rates for access to its UNEs, on the ground that either the "public interest" or the *Sprint* decision requires Qwest to lower its UNE rates still further in order to promote "the widest unbundling possible" – an objective that the D.C. Circuit itself recently disavowed. *United States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002).

Moreover, the Commission made clear in the *Vermont* and *Georgia/Louisiana* decisions that it "will look beyond a negative margin for the provision of residential services in high-cost areas using the UNE-Platform when examining allegations of price squeeze." *Vermont 271 Order*, ¶ 68; *Georgia/Louisiana 271 Order*, ¶ 286. The Commission recognized that states have a number of policy reasons for setting retail rate levels, and "it would not be in the public interest to deny a section 271 application simply because the local telephone rates are low." *Vermont 271 Order*, ¶ 68. Congress required *cost*-based rates for UNEs, and thereby made UNEs attractive to CLECs as an entry strategy mostly for customers that would otherwise pay rates that, in the aggregate, are *at or above cost*. Congress neither designed nor expected a cost-based platform to help CLECs recruit customers – including many residential customers – that an ILEC serves at *below-cost* rates through various subsidy mechanisms. For such customers,

103/ *Vermont 271 Order*, ¶ 65; *Georgia/Louisiana 271 Order*, ¶ 283. *Multistate Report* on

Congress gave CLECs a separate entry option with a different pricing scheme: resale of an ILEC's retail services, for which CLECs pay a wholesale rate stepped down from the incumbent's retail rate, even where the ILEC's retail rate for particular customers is below cost. See 47 U.S.C. §§ 251(c)(4), 252(d)(3); *Vermont 271 Order*, ¶ 69; *Georgia/Louisiana 271 Order*, ¶ 287. 104/

In any case, while there is no legal merit to the CLECs' "price squeeze" claim on *any* set of facts, the facts here would render any such claim unsupportable even if that were not the case. Competition is thriving in the application states. Accordingly – and particularly in light of the resale option – there is no basis for any contention that the "UNE pricing selected here [has] doomed competitors to failure." *Sprint Communications Co. v. FCC*, 274 F.3d at 554. Moreover, even taken in isolation, Qwest's UNE rates, when compared to the revenue that CLECs can reasonably expect to receive from purchasing those UNEs, independently demonstrate that CLECs have the opportunity to compete successfully using the UNE-P or other UNE-based configurations in the states covered by this application states. 105/ In this regard,

---

Public Interest at 5-6 (Oct. 22, 2001).

104/ In fact, because Section 271(d)(4) bars the FCC from "extend[ing] the terms used in the competitive checklist," the Commission could not (even if it wished to) lawfully construe the "public interest" standard to impose new "top-down," margin-related pricing requirements *for UNEs* instead of, or in addition to, the "bottom-up" cost standard prescribed by Section 252(d)(1) and incorporated by reference in the checklist.

105/ Any meaningful margin analysis must consider all the revenue a CLEC receives as a result of serving a customer through UNEs, compared against the cost of doing so. The analysis thus must take into account not only basic exchange retail rates ("1FRs" in the case of residential customers), but also any additional revenues that the CLEC would earn from providing other services as well, such as vertical feature charges, intraLATA toll revenues, and the amounts the CLEC would receive (or avoid paying) in interstate and intrastate access charges for originating and terminating long-distance minutes. As discussed in the attached Declarations of Jerrold Thompson for Colorado, Idaho, Iowa, Nebraska, and North Dakota, such comparisons confirm that the TELRIC-compliant rates in these states provide CLECs with widespread opportunities to compete using the platform. Moreover, these comparisons are conservative in approach because after conducting a thorough analysis of record evidence presented on this point, the Multistate Facilitator concluded that the price squeeze "revenue analysis that AT&T presented here was . . . so incomplete as to render it of inconsequential value in assessing the state of local markets. 106/

Finally, there is no basis for any allegation that Qwest's interstate access rates would somehow subject unaffiliated IXCs to a "price squeeze" in the *interLATA* market – or, accordingly, for the MPSC's conclusion that Qwest's satisfaction of the public interest standard under Section 271 requires it to file a revenue requirement/rate design case by October 1, 2002. The Commission has repeatedly rejected this claim on the merits, 107/ and it has separately made

---

they focus exclusively on serving residential customers; in reality, CLECs also serve business customers, from whom they earn higher margins. *Cf. New Jersey 271 Order*, ¶¶ 169-75 (rejecting price squeeze allegations on factual grounds).

106/ *Multistate Report* on Public Interest at 6 (Oct. 22, 2001). The Facilitator also concluded: "AT&T's analysis failed to persuade for many reasons. First, it did not recognize that local rates consist of much more than the basic monthly charge for service. Vertical features and intrastate toll revenues must be considered, as another CLEC, WorldCom, pointed out . . . . AT&T conceded that it had made no effort to measure or to take account of such other revenues. Second, AT&T's analysis did not consider the existence of resale as an option for certain service classes that do not lend themselves to economical competition through the use of UNEs. Third, AT&T did not provide any evidence of business rates; it did not even provide its simple comparison of basic rates for such service. Fourth, AT&T did not address the issue of what "subsidies" might be available to it in the event that it should serve qualifying residential lines through facilities-based competition." *Id.* at 5-6. Similar, the WUTC rejected the CLECs' price squeeze arguments, concluding that, particularly in light of Qwest's recent UNE rate reductions, "we find that the level of UNE rates in Washington state does not weigh against a public interest finding." *Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Communications Act of 1996,* Docket Nos. UT-003022 and UT-003040, 39th Supplemental Order; Commission Order Approving SGAT and QPAP, and Addressing Data Verification, Performance Data, OSS Testing, Change Management, and Public Interest, at 96, ¶ 328 (WUTC July 1, 2002).

107/ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification, 15 FCC Rcd 9587, 9597-98, ¶¶ 19-20 (2000); *accord Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523, 548 (8th Cir. 1998) (rejecting same "price squeeze" argument), *affirming Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16101-04 ¶¶ 277-82 (1997); *see also Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, Second Report and Order, 12 FCC Rcd 15756, 15811-12 ¶ 97 (1997).

clear that access charge reform – much of which has already been completed in any event 108/ – is *not* a prerequisite to Section 271 approval. 109/ Simply stated, both Congress and the Commission have concluded that the Section 271 approval process and access charge reform are not, and should not be, linked. 110/

108/ *See, e.g., Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962 (2000), *aff'd in pertinent part, Texas Office of Pub. Util. Counsel v. FCC*, 265 F.3d 313 (5th Cir. 2001).

109/ *See, e.g., Supplemental Order Clarification*, 15 FCC Rcd. at 9598, ¶ 19 ("Congress anticipated that some [BOCs] would obtain authorization under 47 U.S.C. 271 to originate in-region long-distance services before the completion of access charge reform.").

110/ In its *Access Charge Reform Order*, the Commission specifically found that "independent (non-BOC) incumbent LECs have been providing in-region, interexchange services on a separated basis" for over ten years "with no substantiated complaints of a price squeeze." *First Report and Order, Access Charge Reform,* 12 FCC Rcd 15982 ¶ 279 (1997). Similarly, in the *Non-Accounting Safeguards Order*, the Commission noted that "[t]he structural and nondiscrimination safeguards contained in section 272 ensure that competitors of the BOC's section 272 affiliate have access to essential inputs . . . on terms that do not discriminate against the competitors and in favor of the BOC's affiliate." *Non-Accounting Safeguards Order* ¶ 13. And in its *Supplemental Order Clarification,* the Commission held that the Section 272 requirements "provide adequate safeguards against any effort by an incumbent to obtain an unfair competitive advantage in the long-distance market by discriminating against unaffiliated IXCs or by improperly allocating costs or assets between itself and its long-distance affiliate." *Supplemental Order Clarification* ¶ 20.

CONCLUSION

The local exchange market in each of the application states is demonstrably open to competition. Qwest has satisfied its statutory checklist obligations and otherwise complied with the requirements of the 1996 Act, and it will continue to do so in the future. Its entry into the interLATA market in each of Montana, Utah, Washington and Wyoming will fulfill the promise of competition for all the residents of these states.

Accordingly, Qwest's Consolidated Application should be granted.

Respectfully submitted,

QWEST COMMUNICATIONS INTERNATIONAL INC.

By: ______________________

Peter A. Rohrbach
Mace J. Rosenstein
Linda L. Oliver
David L. Sieradzki

Hogan & Hartson L.L.P.
Columbia Square
555 Thirteenth Street NW
Washington, DC 20004
202-637-5600

Counsel for Qwest Communications International Inc.

R. Steven Davis
Dan L. Poole
Andrew D. Crain
John L. Munn
Lynn A. Stang

Qwest Communications International Inc.
1801 California Street
Suite 4700
Denver, CO 80202
303-896-2794

July 12, 2002